IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 608 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?Yes

2. To be referred to the Reporter or not?
Yes, but only bracketed
portion from page 9 to 12

3. Whether Their Lordships wish to see the fair copy of the judgement?
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

RAMNATH GURU MAHESHNATH

Versus

STATE OF GUJARAT

Appearance:
MR MJ BUDDHBHATTI for appellant
Mr. K.P. Rawal,APP, for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and MR.JUSTICE M.H.KADRI
Date of decision: 06-07-08/08/97

ORAL JUDGMENT : (Per; Panchal, J.)

In this appeal, which is filed under Section 374(2) of the Code of Criminal Procedure, 1973, the

appellant has challenged his conviction under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, recorded by the learned Additional Sessions Judge, Rajkot, vide judgment and order dated July 12, 1990, in Sessions Case No.67 of 1989.

The original informant Nathubha Ajubha Jadeja is the resident of village Vadali. Just near the village, there is a temple known as Vihot Mataji-nu Mandir. In the precinct of the temple, there is a room wherein mendicants used to reside. Maheshnath Guru Mangalnath was the Mahant of the temple and the appellant was his disciple, whereas deceased Sanjaynath was the disciple of the appellant. It may be stated that Maheshnath, who was the Mahant of the temple, was aged as well as blind and, therefore, the appellant was looking after the affairs of the temple. The original informant used to visit the temple daily for offering worship. The incident in question took place on March 31, 1989. At about 9.30 p.m. the informant had gone to the temple for darshan purpose. When the original informant passed by the room occupied by Maheshnath and others, he learnt that Maheshnath and Sanjaynath were assaulted by some people and Sanjaynath was lying unconscious and bleeding. The injured were removed to Rajkot Civil Hospital in a Matador for treatment. However, during the course of treatment, Sanjaynath succumbed to his injuries. Initially, on the complaint of the informant, C.R. No. 66/89 was registered by Rajkot Police Station for the offences punishable under Section 307 of the Indian Penal Code. On the death of Sanjaynath, the complaint was registered for the offence under Section 302 of the Indian Penal Code. Mr. C.T. Sonara, the then Police Inspector, Rajkot Police Station, investigated the first information lodged by Mr. N.A. Jadeja. The investigating officer held inquest on the dead body of Sanjaynath and recorded statement of witnesses, who were found conversant with the facts of the case. Thereafter, dead body was sent for post-mortem. On April 3, 1989, the investigating officer arrested the appellant and another accused Kalidas Guru Bhagwandas under a panchanama which was prepared in presence of panchas. During the interrogation, it transpired that the appellant had addressed a chit on October 31,1989 to accused Kalidas informing him that the work was to be carried out and completed at 8 p.m. on October 31, 1989. In view of the information willingly given by accused Kalidas, the chit written by the appellant to accused Kalidas was discovered in presence of panchas under a panchnama which was prepared under Section 27 of the Evidence Act, The investigating officer also obtained

specimen writing of the appellant in presence of panchas. The chit recovered at the instance of accused Kalidas and the specimen writing of the appellant were sent to the hand-writing expert for opinion. The other articles, which were seized during course of investigation, were sent to the Forensic Science Laboratory for analysis. On completion of investigation, the appellant and another accused Kalidas were chargesheeted in the court of the learned Judicial Magistrate, First Class, Rajkot, for the offences punishable under Sections 302, 324, 120B read with Section 114 of the Indian Penal Code.

As offence under Section 302 of the Indian Penal Code is exclusively triable by a court of sessions, the case was committed to the Sessions Court for trial, where it was numbered as Sessions Case No. 67/89. The learned Additional Sessions Judge framed necessary charge against the accused at Exh.1. The charge was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) Dr. Deepak Shantilal Mehta, P.W. No.1, Exh.5, (2) Nathubha Ajubha Jadeja, P.W. No.2, Exh.10, (3) Dr. Govindbhai Khodabhai , P.W. No.3, Exh.13, (4) Aniruddhsinh Mahavirsinh, P.W. No.4, Exh.15, (5) Prahladsinh Ramsinh, P.W. No.5, Exh.16, (6) Manohar Mohanlal, P.W. No.6, Exh.17, (7) Maheshnath Guru Mangaldas, P.W. No.7, Exh.49,(8) Danabhai Dhunabhai,P.W. No.8, Exh.50, (9) Jitendra Vinodbhai, P.W. No.9, Exh.51, (10), Kesarben Khimabhai, P.W. No.10, Exh.52. (11) Vashrambhai Naranbhai, P.W. No.11, Exh.57, (12) Bhupatbhai Kalabhai, P.W. No.12, Exh.58, (13) Mohanbhai Jadavbhai, P.W. No.13, Exh.59, (14) Shaktisinh Natubha Jadeja, P.W. No.14, Exh.60. (15) Rajubhai Mohanbhai, P.W. No.15, Exh.63, (16) Ramsingh Ranjitsinh, P.W. No.16, Exh.64, (17) Pravinbhai Chhaganbhai Ratandas P.W. No.17, Exh.66, (18) Pravindbhai Haribhai, P.W. No.18, Exh 68, (19) Jeevanlal Bhanjibhai, P.W. No.19, Exh.70. (20) Jatubha Kashubhai Gohil, P.W. No.20, Exh.72, (21) Mastram Odhavdas, P.W. No.21, Exh.75, (22) Balubha Dholatsinh Jadeja, P.W. No.22, Exh.78. and (23) Chimanlal Trikamlal , P.W. No.23, Exh.83, to prove its case against the accused. The prosecution also produced documentary evidence such as post-mortem notes of the deceased, first information report lodged by Nathubha, chit written by the appellant to accused Kalidas, inquest report, panchanama of place of occurrence, report received from the hand-writing expert as well as the Forensic Science Laboratory, etc. to substantiate the charge framed against the accused. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the accused generally on the case and

recorded statements under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the accused denied the case of the prosecution, but did not lead any evidence in defence.

The learned Judge noted that no eye-witnesse was examined by the prosecution to prove the case against the accused and the case against the accused was based on circumstantial evidence. On appreciation of evidence led by the prosecution, the learned Judge held that following circumstances were proved by the prosecution. (1) Quarrels used to take place between the appellant and deceased Sanjaynath but Maheshnath, who was Mahant of the temple, used to intervene and pacify the deceased as well as the appellant. Thus, the appellant had strong motive to kill Sanjaynath. (2) The appellant and the deceased were residing in one room. (3) The room in which the appellant and the deceased were residing is situated at the foot of the temple and is at a distance of about 5 K.M. from village Vadali. Thus, the area where the room is situated is deserted one and it was convenient to the appellant to kill Sanjaynath. (4) Maheshnath, who was preceptor of the appellant, was aged 80 as well as blind and, therefore, not only his presence in the room was inconsequential but it was more convenient for the appellant to kill Sanjaynath. (5) The appellant had informed his preceptor Guru Maheshnath that he was to go out of station and, thus, right from the beginning, the appellant created evidence regarding his own alibi. (6) The evidence of Jitendra (Exh.51) is neither helpful to the prosecution nor to the appellant, but, from his evidence, it is apparent that the appellant had concocted evidence regarding his presence at Rajkot on the date of the incident. (7) The evidence of witness Bhupatbhai of village Tramba indicates that, on the date of the incident, i.e. on March 31, 1989, he had seen the appellant alighting from a bus at village Tramba and the distance between village Tramba and the temple of vihot mata is negligible. (8) The evidence of witness Mohanbhai (Exh.59) shows that, on the date of the incident, the appellant had gone to the house of the witness in the evening and taken his bi-cycle informing the witness that he wanted to go to the temple of vihot mata and, late in the night, had again left the cycle at his place without informing him. (9) The temple of vihot mata is situated at a distance of 5 k.m from the village and the devotees visit the temple after 9 p.m. whereas, according to the writing Exh.22, the work was to be carried out at 8 p.m. i.e., before arrival of the devotees at the temple. (10) It is proved that Exh.22 is the writing executed by the appellant and inference can

be drawn that the mention about "work to be carried out" in Exh.22 has reference to the murder of Sanjaynath. (11) The fact that no explanation is offered by the appellant in his statement under Section 313 of the Code is a relevant fact. After recording abovereferred to findings, the learned Judge concluded that the facts established are consistent only with the hypothesis of the guilt of the appellant. IN view of these conclusions, the learned Judge convicted the appellant under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act by the impugned judgment, but acquitted the original accused No. 2 i.e. Kalidas Guru Bhagwandas. So far as offence under Section 302 of the Indian Penal Code is concerned, the appellant is sentenced to rigorous imprisonment for life. However, no separate sentence is imposed on the appellant for the offence punishable under Section 135 of the Bombay Police Act.

Mr. Jitendra M. Buddhbhatti, learned counsel for the appellant, has taken us through the entire evidence on record. It was submitted that the learned Judge has committed material irregularity in recording joint statement of two accused under Section 313 of the Code, which has vitiated the trial and, therefore, the appeal deserves to be allowed. The learned counsel pleaded that proved circumstances, namely, that (1) the assailants were 3 to 4 in number and were talking, inter se, in Hindi language; (2) the appellant, his preceptor Guru Maheshnath and the deceased used to talk with each other in the Gujarati language; (3) the articles lying in the room were not found in scattered condition and (4) alibi of the appellant on the date of the incident are totally inconsistent with hypothesis of the guilt of the appellant and, therefore, conviction of the appellant under section 302 of the Indian Penal Code should be set aside. It was claimed that the circumstances, which, according to the prosecution are established, are thoroughly inconsistent with hypothesis of the guilt of the appellant and/or are explainable and, therefore, the appeal should be accepted. It was pleaded that the chain of evidence is not complete so as not to leave any reasonable ground for conclusion inconsistent with innocence of the accused and, therefore, the impugned judgment should be set aside.

Mr. K.P. Rawal, learned counsel for the State Government, submitted that the circumstances, which are established by the prosecution, and which are enumerated in detail by the learned Judge in the impugned judgment, are consistent only with hypothesis of the guilt of the

appellant and, as they are not explainable on any other hypothesis except that the appellant is guilty, the appeal should be dismissed. It was stressed on behalf of the State that the chain of evidence is complete as not to leave any reasonable ground for conclusion inconsistent with the innocence of the accused and shows that, in all human probability, the act was done by the appellant and, therefore, the appeal should be dismissed.

The fact that deceased Sanjaynath died homicidal death is not in dispute before us in the present appeal. The injuries sustained by deceased Sanjaynath are enumerated in detail by witness Nathubha Ajubha Jadeja and others. In the inquest report, which was prepared by the investigating officer in presence of panchas, the injuries sustained by the deceased are noted. The injured were removed to Rajkot Civil Hospital where they were treated by Dr. Govindbhai Khodabhai Parmar. Dr. Govindbhai Khodabhai Parmar, P.W. No.3, Exh.13, has also mentioned in detail the injuries which were noted by him while treating Sanjaynath. Autopsy on the dead body of Sanjaynath was performed by Dr. Deepak Shantilal Mehta of Civil Hospital, Rajkot. Evidence of Dr. Deepak Shantilal Mehta is recorded at Exh.5. In his substantive evidence before the court, he has narrated in detail the injuries which were noticed by him while performing autopsy. The injuries, which were noticed by him, are also mentioned in post-mortem notes prepared by him which are produced at Exh.7. Having regard to the evidence led by the prosecution, and more particularly evidence of Dr. Deepak Shantilal Mehta, which is supported by the post-mortem notes, we are of the view that the finding recorded by the learned Judge that the deceased died homicidal death is eminently just and is hereby upheld.

{{ Submission that recording of joint statement of the accused under Section 313 of the Code of Criminal Procedure,1973, has vitiated the trial and, therefore, the impugned judgment deserves to be set aside, has no merit and cannot be accepted. It is true that where there are several accused in a case, it is incumbent upon the learned Judge to examine each of them separately and a joint statement of all the accused in a single paragraph is not authorised by the Section. Section 313 contemplates individual statements of the accused and not joint statement, notwithstanding the fact that such questions are uniform. Where there are several accused, the case of each of them should be individually considered and each of them should be questioned with reference to particular position brought on by the evidence against him. Preparing a common questionnaire

for all the accused persons in a joint trial and recording answers of all the accused to all the questions set out therein without bothering to consider if any question relates to any particular accused, would render examination under Section 313 deceptive. There is no manner of doubt that the practice of drawing up a common questionnaire against several accused in case of a joint trial is improper and cannot be upheld and, therefore, it will have to be held that the learned Judge committed irregularity in recording joint statement of accused under section 313 of the Code of Criminal Procedure. However, question which arises for consideration of the court is whether recording of joint statement has caused any prejudice to the appellant? Section 465 of the Code deals with the effect of error, omission or irregularity before or during the trial on finding of sentence recorded by the court, and provides as under:

465. Finding or sentence when reversible by reason of error, omission or irregularity.- (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

From a bare reading of Section 465, it becomes evident that error, omission or irregularity committed before or during trial would not be a sufficient ground to reverse or alter the finding, sentence or order passed by the court of competent jurisdiction if failure of justice has in fact not been occasioned thereby. Sub-section (2) provides that in determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. We have gone through the joint statement recorded by the learned Judge under Section 313

of the Code. There is no manner of doubt that all the circumstances appearing against the appellant were put to him so as to enable him to offer explanation to those circumstances. The joint statement is recorded in such a manner that some questions set out therein would relate to the appellant and the same are not related to another accused Kalidas. The learned counsel for the appellant has failed to point out that recording of joint statement under Section 313 of the Code has occasioned a failure of justice. The fact that objection to recording of joint statement was not taken at the time when the statement was being recorded or was not assailed before the learned Judge at the time of arguments, is not in dispute. On the facts and in the circumstances of the case, we are of the opinion that recording of joint statement has not occasioned any failure of justice. Therefore, the first contention raised on behalf of the appellant fails and is rejected. }}

So far as the merit of the case is concerned, it is an admitted fact that the prosecution has not examined any witness claiming to be an eye-witness and the case solely rests on the circumstantial evidence. The Supreme Court in catena of decisions has laid down the law with regard to appreciation of circumstantial evidence. Following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established. (i) Circumstance from which the conclusion of guilt is to be drawn should be fully established. The circumstance concerned "must" or "should", and not "may", be established. (ii) The facts so established should be of a definite tendency of unerringly pointing out towards guilt of the accused. That is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (iii) Circumstance should be of a conclusive nature and tendency. (iv) Circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that, in all human probabilities, the crime was committed by the accused and none else.

In the light of the abovereferred to principles, we would appreciate and examine the evidence led by the prosecution. The evidence of Maheshnath Guru Mangaldas, recorded at Exh.49, shows that in the room of temple of vihot mataji, he was residing with other sadhus. After stating that the appellant is his disciple and the deceased was the disciple of the appellant, witness Maheshnath has informed the court that he is blind in eyes and the appellant was looking after the affairs of the temple. The witness has claimed that the appellant

and the deceased were quarrelling with each other and he used to settle the disputes. So far as the incident is concerned, he has stated that the appellant had gone out of the village and in the night he and Sanjaynath had taken dinner. The witness has claimed that, thereafter, he had fallen asleep and was woken up when some one uttered some words in his ear in Hindi language. This witness has categorically asserted that he could make out that those who had intruded in the temple were outsiders. The witness has also informed the court about the injuries sustained by him. In his cross-examination by the learned counsel for the defence, the witness has admitted that the appellant, Sanjaynath and he himself used to talk, inter se, in Gujarati language. The assertion made by Maheshnath that 3-4 unknown persons had intruded in the temple also gets corroboration from the evidence of complainant Natubha Ajubha Jadeja, P.W. No.2,Exh.10, and the complaint filed by him.

Witness Jitendra Vinodbhai, P.W. No.9, Exh.51, is resident of Rajkot city. At the relevant time, he was residing at Bilwas, Gandhigram, Rajkot, with his grand-father. The witness has deposed before the Court that on March 31, 1989, the appellant had come to the house of his grand-father and stayed in the house during the night. In examination-in-chief the witness pleaded ignorance as to when the appellant had left the house of his grand-father in the next morning. However, in his cross-examination, the witness has, in no uncertain terms, admitted that right from evening till morning of the next day, the appellant was at the residence of his grand-father and had left the house of his grand-father for the temple of vihot mataji in the morning.

Witness Kesarben Khimabhai, P.W. No.10,Exh.52, is the grand-mother of witness Jitendra Vinodbhai. She has also stated in her evidence that, on the date of the incident, the appellant had stayed in her house situated at Bilwas, Rajkot, and left the house next day morning. Though this witness is treated as hostile witness, the fact that the appellant had stayed at her house during night hours and left the house next day morning, is not challenged on behalf of the prosecution.

The evidence of witness Bhupatbhai Kalabhai, P.W. No.12, Exh.58, indicates that on March 31, 1989, he had spotted the appellant alighting from a bus at village Tramba and that, thereafter, the appellant was seen proceeding towards Bhavnagar road. The evidence of Mohanbhai Jadavbhai, P.W. No.13, Exh.59, shows that he is residing in village Vadali and at about 7 p.m. on the

day of the incident, the appellant had come to his house and taken his bi-cycle. The witness has deposed before the court that, after taking the cycle, the appellant had gone towards the temple and had left the cycle at his house without informing him.

The fact that the chit Exh.22 was discovered pursuant to the information provided by accused Kalidas is not seriously challenged before us in the appeal. What is challenged before us is that specimen writings of the appellant were not obtained during the course of investigation and, therefore, it is submitted that finding that chit Exh.22 was written and addressed by the appellant to Kalidas is vitiated. This submission is made because the panch witnesses have not supported the prosecution case that in their presence specimen writings of the appellant were obtained by the investigating officer. However, the investigating officer, in his deposition on oath, has given particulars in detail as to how specimen writings of the appellant were obtained by him in presence of panchas. The learned Judge has rightly held that merely because the panch witnesses have not supported the case of the prosecution, that can hardly be treated as sufficient ground for disbelieving the evidence of police officials. The learned Judge, who had an advantage of observing demeanour of the witnesses, has held that the evidence of the investigating officer inspires confidence and is reliable. On the facts and in the circumstances of the case, we are of the opinion that no error is committed by the learned Judge in holding that the prosecution has proved beyond reasonable doubt that specimen writings of the appellant were obtained by the investigating officer during the course of investigation. As noted earlier, the chit Exh.22 and specimen writing of the appellant were sent to the hand-writing expert for opinion. The prosecution has examined hand-writing expert at Exh.17. Witness Manohar Mohanlal, who had compared the disputed and admitted specimen writings of the appellant, has deposed before the court that Exh.22 was written by the appellant. Reasons for his opinion are detailed by him in his substantive evidence before the court. He has also indicated the reasons in his report which is produced at Exh.37 on the record of the case. Therefore, we are of the opinion that it is proved by the prosecution that chit Exh.22 was written by the appellant.

It may be mentioned that the appellant and another accused Kalidas were sought to be prosecuted under Section 120B of the Indian Penal Code. It is an admitted position that the learned Judge has acquitted

the appellant as well as accused Kalidas of the offence punishable under Section 120B of the Indian Penal Code, as no reliable evidence was led by the prosecution to establish that the appellant had agreed with Kalidas to do or cause to be done an illegal act. Meaning thereby, the case of the prosecution regarding criminal conspiracy has failed and acquittal of accused Kalidas is not challenged by the State by way of preferring an appeal before the Court. In light of the proved facts, the guilt or otherwise of the appellant will have to be determined.

It hardly needs to be emphasized that, in a case depending on circumstantial evidence, motive, which might have prompted the accused to commit crime, plays an important role. Though witness Maheshnath has stated that quarrels used to take place between the appellant and the deceased, he has not specified the nature of quarrels which used to take place between the appellant and the deceased, in his deposition. He has claimed in his evidence that he was able to pacify both the appellant and the deceased. Merely because quarrels were taking place between the appellant and the deceased, one need not jump to the conclusion that, because of those quarrels, the appellant killed the deceased. The fact that quarrels used to take place between the appellant and the deceased is not sufficient for holding that the appellant had motive to commit murder of the deceased. On the facts and in the circumstances of the case, we are of the view that the prosecution has failed to prove motive, which prompted the accused to commit crime in question and, therefore, one of the important circumstances to be considered in a case of circumstantial evidence is missing in the present case.

From the evidence of Maheshnath Guru Mangaldas, read with evidence of complainant Natubha Ajubha Jadeja and his complaint, it is evident that three to four unknown persons had intruded in the temple and one of them had assaulted witness Maheshnath. Witness Maheshnath has also, in no uncertain terms, deposed before the court that the intruders were talking, inter se, in Hindi language, whereas the deceased, the appellant and he himself used to talk with each other in Gujarati language. This circumstance, which is proved by the prosecution, is totally inconsistent with the hypothesis of the guilt of the appellant. It is nobody's case that, at the time of the incident, the appellant was identified by any one by voice. The evidence of injured Maheshnath would clearly show that the appellant was not one of the intruders who had come to the temple and

assaulted deceased as well as him. The evidence of witness Jitendra Vinodbhai and witness Kesarben Khimabhai clearly establishes that right from the evening of March 31, 1989, till the morning of the next day, the appellant was at Rajkot and had stayed overnight at the house of the grand-father of witness Jitendra. The other set of evidence, namely, evidence of witness Bhupatbhai Kalabhai and witness Mohanbhai Jadavbhai, would indicate that, at about 7 p.m. on the date of the incident, the appellant was spotted at the bus-stop of village Tramba and had gone towards the temple of vihot mata on a cycle of witness Mohanbhai. Thus, the prosecution has led two contradictory set of evidence on the record. One set of evidence indicates that the appellant, at the relevant time, was at Rajkot, whereas the other set of evidence indicates that the appellant was found going towards the temple at about 7 p.m. on the date of the incident. It is well settled that, when two sets of evidence are led by the prosecution, benefit of doubt must go to the accused. Witness Jitendra Vinodbhai as well as witness Kesarben are examined by the prosecution and not by defence. In fact, the prosecution wants the Court to believe the evidence of Jitendra as well as that of Kesarben. If the evidence of these two witnesses is believed, there is no manner of doubt that the appellant was at Rajkot at the time when the incident took place on March 31,1989. Thus, the evidence of witness Jitendra and witness Kesarben indicating that the appellant was at Rajkot at the time of the incident is a circumstance which is totally inconsistent with the guilt of the appellant. Even if the evidence of witness Bhupatbhai and Mohanbhai is accepted as truthful, it would, at best, indicate that the appellant had gone towards the temple in the evening on cycle of Mohanbhai. That circumstance by itself cannot be treated as an incriminating circumstance and the said circumstance is explainable on many other hypothesis. Similarly, the chit allegedly written by the appellant leads one to nowhere. As observed earlier, the chit was addressed by the appellant to Kalidas, who was stationed at Rajkot. The fact that in the chit it was mentioned that the work was to be carried out at 8 o' clock and it is not mentioned therein that the work was to be carried out at 8 a.m. or 8 p.m. on March 31, 1989. On the facts of the case, we are of the opinion that the chit cannot be construed as an incriminating circumstance of a conclusive nature and tendency.

The prosecution evidence also establishes that, during the course of investigation, dog squad was pressed into service and finger-print expert was summoned, but,

on no article seized from the place of occurrence the finger prints of the appellant were found. It is an admitted fact that the clothes of the appellant which were attached under a panchanama were never blood-stained. These circumstances are consistent with the innocence of the appellant.

The panchanama of place of occurrence would show that the articles lying in the room were found in a scattered condition. If the appellant wanted to kill deceased Sanjaynath, in normal course of conduct, he would not touch other articles lying in the room. The fact that the articles in the room were found scattered, indicates that the intention of the intruders was also to commit theft of some valuables. This circumstance, which is proved by the prosecution, is also totally inconsistent with the guilt of the appellant. On the facts and in the circumstances of the case, we hold that there is not a chain of evidence so complete as not to leave any reasonable ground for the conclusion inconsistent with innocence of the accused. It is difficult to hold that the circumstances established by the prosecution prove that, in all human probability, the act was done by the appellant and none else. Under the circumstances, the conviction of the appellant under Section 302 I.P.C. is liable to be set aside and the appeal deserves to be allowed.

Conviction of the appellant under Section 135 of the Bombay Police Act also cannot be sustained when the prosecution has failed to prove that the appellant had committed murder of deceased Sanjaynath by means of inflicting blows on him with wooden-log of cradle. The ingredients of Section 135 of the Bombay Police Act are not satisfied in the present case and, therefore, the conviction of appellant under Section 135 of the Bombay Police Act, also will have to be set aside.

For the foregoing reasons, the appeal succeeds. Judgment and order dated July 12, 1990, rendered by the learned Additional Sessions Judge, Rajkot, convicting the appellant under Section 302 of the Indian Penal Code as well as Section 135 of the Bombay Police act and the sentence imposed on the appellant are hereby set aside. The appellant be set at liberty unless his presence is needed with reference to any other case. Muddamal is ordered to be disposed of in terms of directions given by the learned Judge in the impugned judgment.

*****

(swamy)